IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.19874 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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| **1** | Whether Reporters of Local Papers may be allowed to see the judgment ? | **NO** |
| **2** | To be referred to the Reporter or not ? | **NO** |
| **3** | Whether their Lordships wish to see the fair copy of the judgment ? | **NO** |
| **4** | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | **NO** |
| **5** | Whether it is to be circulated to the civil judge ? | **NO** |

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THE CHAIRMAN - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MRUGEN K PUROHIT for Petitioner(s) : 1,
MR MAULIK NANAVATI, AGP for Respondent(s) : 1, 3, 4
MR DHARMESH V SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 30/10/2007
ORAL JUDGMENT

(1) Learned advocate for the petitioner seeks permission to amend the prayer clause. Permission granted. Amendment to be carried

out forthwith.

(2) RULE. Learned advocates for the respective respondents are directed to waive service of rule. The petition is taken up for final hearing and disposal today.

(3) The petitioner-Trust deposited a sum of Rs.10,00,000/- (Rupees Ten lacs) by way of fixed deposit for a period of one year with interest @ 15% p.a. with respondent No.2-Bank. The fixed deposit matured on 13.02.1997 entitling the petitioner to an amount of Rs.11,50,000/- (Rupees Eleven lacs Fifty thousand). As respondent No.2 did not repay the amount, the petitioner moved the Civil Court by filing Summary Civil Suit No.1414 of 1997. The Summary Civil Suit came to be decreed in favour of the petitioner by judgment and decree dated 23.09.2007 for an amount of Rs.18,02,831.10 (Rupees Eighteen lacs Two thousand Eight hundred Thirty One and Ten paise). Despite the decree as the

petitioner did not get the amount execution proceedings were initiated seeking a direction to respondent No.2 to comply with the decree. During pendency of the Execution Proceedings No.208 of 2000 respondent No.2-Bank has gone into liquidation and a liquidator appointed. The petitioner approached respondent No.4, the Registrar, for sanction under Section 112 of the Gujarat Co-operative Societies Act, 1961 (the Act) vide application dated 04.03.2004. On 16.09.2005 respondent No.4 rejected the application. The petitioner carried the matter in revision before respondent No.1 under Section 155 of the Act. Vide impugned order dated 01.06.2007 the revision application, being Revision Application No.202 of 2005 has been rejected.

(4) The petitioner has approached this Court with the following prayers:

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(a) This Honourable Court may be pleased to issue a writ of *mandamus* or a writ in the

nature of *mandamus* or any other appropriate writ, order or direction declaring that the non-granting of permission to the petitioner by the Registrar under Section 112 of the Gujarat Co-operative Societies Act, 1961 is bad in the eye of law, and the order dt. 01.06.2007 passed by the State Government in Revision App. No.202/05 whereby order of Registrar dt. 1/4 March 2004 is confirmed is bad in eye of law and may further be pleased to direct the respondent No.4 to grant permission to the petitioner under Section 112 of the the Gujarat Co-operative Societies Act pursuant to the application made by the petitioner on 1st / 4th March 2004;

(b) This Honourable Court may be further pleased to issue a writ of *certiorari* or a writ in the nature of *certiorari* or any other appropriate writ, order or direction quashing and setting aside the Judgement and order dated 1st June 2007 passed by the Additional Secretary, Agriculture and Cooperative Department of the State of Gujarat in Revision Application No.202 of 2005, and quashing and setting aside the judgment and order dated 16th September 2005 passed by the Registrar of Cooperative Societies, Gujarat State, Gandhinagar, which are annexed at Annexure 'A' collectively to the present petition.

(c) Pending hearing and final disposal of this petition, this Honourable Court may be pleased to direct the respondent No.4 to grant permission to the petitioner under Section 112 of the the Gujarat Co-operative Societies Act, 1961 to proceed further with the Execution Petition No.208 of 2000 pending before the City Civil Court, Ahmedabad, pursuant to the application preferred by the petitioner on 1st/4th March 2004.

(d) Any other and further relief, which this Honourable Court deems fit and proper in the facts and circumstances, may please be granted."

(5) Heard the learned advocates appearing for the petitioner, the liquidator and the respondent authorities.

(6) As can be seen from the impugned order dated 01.06.2007 respondent No.1 has, after recording that respondent No.2-Bank is in liquidation, stated that the liquidator can seek guidance from the Registrar, respondent No.4, and make payment of the deposit of the petitioner after deciding the order of priority as suggested by the Registrar.

Admittedly, the aforesaid observation is contrary to the law laid down by this Court.

(7) Realizing this position the Registrar has issued circular letter dated 17.10.2007 whereunder, in light of the judgment rendered in Special Civil Application No.11615 of 2004 and cognate matters, all circulars issued in relation to fixation of order of priority have been cancelled and the liquidator is to take the decision himself in light of the provisions of Sections 107 to 115 of the Act.

(8) It is also an admitted position that respondent No.4 has also adopted a similar stand on the basis of the earlier circulars issued by the said authority, namely, the liquidator is bound by the order of priority that the Registrar may fix and/or suggest.

(9) Learned advocate for the respondent No.2, the liquidator, has placed on record communication dated 26.10.2007, addressed by the liquidator to the learned advocate, to submit that the

order of priority shall be determined after taking into consideration the claims of the secured creditors and at present no fund is available with the liquidator so as to satisfy various claims.

(10) Though various submissions have been made in affidavit-in-reply filed on behalf of the liquidator as well as affidavit-in-rejoinder, it is not necessary to enter into any discussion on merits of the various contentions. Suffice it to state that in light of the circular dated 17.10.2007 issued by the Registrar, the reasons advanced by respondent No.1 authority for rejecting the revision application vide impugned order dated 01.06.2007 do not survive. Even the order dated 16.09.2005 made by respondent No.4 also cannot be permitted to hold the field in light of his own circular issued on 17.10.2007.

(11) In the circumstances, the order dated 01.06.2007 and the order dated 16.09.2005

cannot survive and are hereby quashed and set aside. The application dated 04.03.2004 filed by the petitioner before respondent No.4 authority stands restored to file, who is directed to take a fresh decision in accordance with law, after giving adequate opportunity of hearing to the petitioner.

(12) The petition is allowed accordingly in the aforesaid terms. It is not possible to grant any other reliefs as prayed for as the application is required to be decided afresh by respondent No.4 authority. Rule made absolute in the aforesaid terms. There shall be no order as to costs.

Sd/-
[ D.A. MEHTA, J ]

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Bhavesh*